

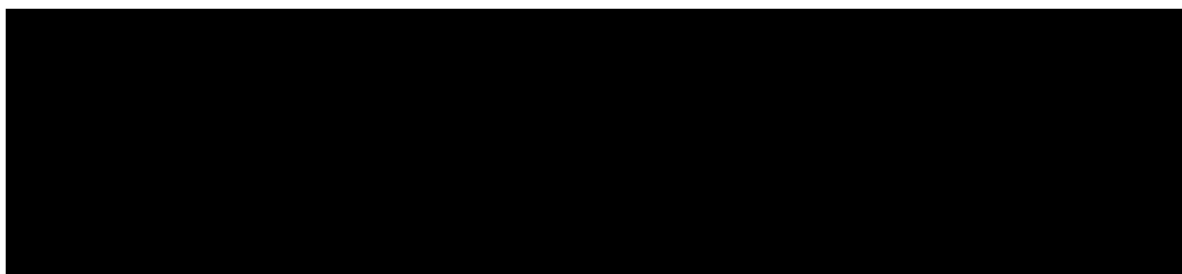
CONFIDENTIAL**OGC HAS REVIEWED.**

24 March 1949

MEMORANDUM FOR: THE EXECUTIVE

SUBJECT: Status of Payments to STATSPEC
Attendant

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2. Some of the employees who are married have satisfactory cooking and eating facilities in their own quarters. Others who are not married have experienced difficulty in purchasing and preparing their meals. At one time these unmarried employees joined together in a co-operative arrangement through which they employed a mess boy to shop for and prepare their food. This worked satisfactorily until changes in personnel reduced the number who were in a position to support the co-operative effort, and this remainder could not afford the cost of the mess boy. The result was an unsatisfactory and unsanitary eating situation.

3. The problem became of serious concern both to the local office and to Washington headquarters, inasmuch as the situation threatened low morale, illness and the loss of personnel, the last of which is particularly serious as the trained linguists necessary to this operation are very difficult to find and recruit. It was suggested therefore that the problem merited consideration of a Government run mess for all employees, and there was cited as authority for this proposal the Act of 5 March 1926 (45 Stat. 195, 5 U.S.C.A. 75a.):

"The head of an executive department or independent establishment, where, in his judgment, conditions of employment require it, may continue to furnish civilians employed in the field service with quarters, heat, light, household equipment, subsistence, and laundry service; and appropriations

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of the character used before March 5, 1950, for such purposes are hereby made available therefore: Provided, That the reasonable value of such allowances shall be determined and considered as part of the compensation in fixing the salary rate of such civilians."

4. The proposition was favorably considered by headquarters, and as a preliminary step, authority was granted to the branch to increase its table of organization by one place to permit appointment of a mess steward at grade GPC-5. The appointment was carried out by a personnel action in proper form signed by the Chief of the [REDACTED] and under this authority, the mess steward was put on the Government payroll.

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5. The Disbursing Officer made regular payments on his payroll, and it was not until the payrolls were reviewed in Washington that any question was raised as to the payments made. A careful review of the situation was made, and it was felt that there was no specific appropriation language providing for salary of a mess steward and that therefore the payments should stop immediately.

6. As the Act of 5 March 1950 cited above required that the reasonable value of the facilities furnished under that Act should be considered a part of the compensation in fixing the salary rate of the employees concerned, it was felt that a fair measure of the reasonable value in this case to the employees was the amount each had contributed under the earlier co-operative arrangement for a mess steward, and, accordingly, instructions were given to collect back this amount from each employee concerned. The amount thus collected will not, however, equal the actual salary paid to the mess attendant on the Government payroll, and the question thus arises of the status of this differential, which constitutes an actual expense to the Government.

7. It is clear from the record that there was a definite administrative determination that it would be in the best interests of the Agency and the Government to supply some sort of mess facilities to insure the continued and efficient 24-hour operation of the station. In considering this determination and what might be done to make it effective, the terms of the Act of 5 March 1950 cited above were considered, and in view of its wording, it was felt that there was authority to establish a Government

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of the character used before March 5, 1933, for such purposes are hereby made available therefore: Provided, That the reasonable value of such allowances shall be determined and considered as part of the compensation in fixing the salary rate of such civilians."

4. The proposition was favorably considered by headquarters, and as a preliminary step, authority was granted to the branch to increase its table of organization by one place to permit appointment of a mess steward at grade GPC-5. The appointment was carried out by a personnel notice in proper form signed by the Chief of the Bureau, and under this authority, the mess steward was put on the Government payroll. 25X1A

5. The Disbursing Officer made regular payments on his payroll, and it was not until the payrolls were reviewed in Washington that any question was raised as to the payments made. A careful review of the situation was made, and it was felt that there was no specific appropriation language providing for salary of a mess steward and that therefore the payments should stop immediately.

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Again, in 18 Comp. Gen. 75 at 74, he states:

"... that where there is no statutory authority for the officer to hold over, his incumbency ceases at the end of his term, and that ordinarily for the period while so holding over he is a de facto officer, and as such de facto officer, he has no legal claim for the salary of the office, but if it has been paid it can not be recovered back.



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With reference to the first quotation, since the Agency has collected back from these employees the reasonable value of the mess steward's services to them, it would appear that the remainder is not in excess of the reasonable value of the services to the Government and therefore may be retained. With reference to the second quotation, we feel that the mess steward would have no legal claim for the salary of the office, but since it has been paid, it cannot be recovered back.

10. As stated above, there is no statutory prohibition which we can find on payments of this nature, and on those cases in which the Comptroller General has been compelled to require collection back, the compelling factor has been a specific statutory prohibition. Thus, in 18 Comp. Gen. 120 at 117, he states:

"If there were involved only the question of an appointment in contravention of the Civil Service laws and regulations, it might have been possible to hold that the salary received during July and August 1950 for services actually performed under the illegal appointment could have been retained on the ground that he was a de facto employee."

He then says, on page 121, that since the payment involved was in direct contravention of the plain provisions of the Act quoted, the employee should be required to refund the amount of salary received.

11. In view of the facts involved, therefore, and of these general rules of the Comptroller General, we are of the opinion that collection back of the amounts paid

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to the [REDACTED] mess attendant need not be required. Since the factual situation is unusual and we have no specific ruling to which we can refer, the matter will require consideration by the appropriate administrative officers in consultation with the appropriate representatives of the General Accounting Office.

LAWRENCE H. HENNINGER
General Counsel

STATSPEC

cc: Chief, Fiscal Branch
[REDACTED]
Personnel Officer

✓ Subject
Chrono
Legal Decisions
Central Records

LRH/ml1

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